

## REMARKS

Applicant hereby responds to the Office Action mailed on October 23, 2003, of which this response is filed with a one month extension beyond the three month shortened statutory period for response. The application included claims 1-16 and the Examiner rejects claims 1-16. Upon entry of the foregoing amendments, the application includes claims 1-13, 15-16 and 21-22.

The Examiner rejects claims 9-11 and 14-15 under 35 USC 112 because the Examiner asserts that the metes and bounds of certain claims cannot be determined. Applicant respectfully traverses these rejections. However, to expedite the prosecution of this case, Applicant amends claims 8, 10, and 11 to further clarify the metes and bounds of the claims, as suggested by the Examiner, and cancels claim 14. With regard to claim 15, Applicant asserts that the "cards" may include one or more personal digital assistant (PDA) type device which displays the information from the card on one or more screens. The device may also provide graphics, demonstrations or other electronic forms of the processes discussed in the patent application. The "items" may also include interactive toys and games that located in the particular housing according to the predetermined stage. The electronic implementations are adequately discussed in the specification at, for example, the end of paragraph 0020, paragraphs 0021-0023 and the end of paragraph 0024. For example, these paragraphs state:

In another embodiment, housing 102 may be a database which contains, for example, images of activity items 104 and other electronic depictions or representations of text, forms, and/or data that are discussed herein, wherein the database may be included on visual, electronic, optical, audio tapes, video tapes, computer disks, digital disks, or other forms or mediums which may include depictions, graphical re-creations, and/or representations of the physical items discussed herein.

It will be appreciated that various electronic implementations of the system of the invention are possible. In one embodiment, the system of the invention may comprise a computing system which may be implemented in the form of a computer-server, a PC server, a networked set of computers, or any

other suitable implementation which is known in the art or may hereafter be devised. Further, users (*i.e.*, caregivers and children) may interact with the system via any suitable computing system or input and/or display device (such as a personal computer, personal digital assistant, handheld computer (*e.g.*, Palm Pilot®), laptop, notebook, kiosk, cellular phone, and/or the like). Moreover, a user's computing system may be connected to the system of the invention via any suitable data communications network. . . .

. . . In another embodiment, activity items 104 may be embodied in visual, electronic, optical, audio tapes, video tapes, computer disks, digital disks, or other forms or mediums which may include depictions, graphical re-creations, and/or representations of the physical items discussed herein.

The Examiner next rejects claims 1-14 and 16 under 35 USC 103(a) as being unpatentable over "Brilliant Beginnings Baby Brain Basics Birth to 12 months Parent Kit" in view of Werzberger '298. Applicant respectfully traverses these rejections.

In general, with respect to Werzberger, the reference is limited to primarily an interactive book assembly, with activities that include graphical or textual instructions only, with no real toys, objects, household materials, art supplies, etc. as a part of the pre-packaged materials. The age span targeted for this product is also different (only 3-6 year olds), not birth -5 ½ years as are the presently claimed invention, which is important because of the brain development elements in the present claims which are much more important at the younger ages. The presently claimed invention goes way beyond well-known simple textual instructions in an interactive book. However, the emphasis of the Werzberger system is on text printed material even as it applies to "activities". For example, see pg. 2 *Summary of the Invention*, paragraph 2... "Examples of activities include pictures, puzzles, mazes, and other graphical or textual instructions." See also pg. 2 *Summary of the Invention*, paragraph 3 ...the activity area has means for movably revealing the activity in the activity area.

In contrast, while the presently claimed invention may include interactive books as one of the items in a housing, the presently claimed invention goes way beyond well-known interactive

books by incorporating a housing and detailed activity cards, as required by the independent claims. The presently claimed invention also includes activity cards which may include (i) at least one importance of said selected activity to the development of the brain, (ii) at least one importance of said selected activity to brain building of future school skills, (iii) background information about the type of activity, (iv) directions on how to specifically perform the activity, (v) suggestions about what to say to the child, and (vi) similar activities that can also be accomplished to work on the same skills, as required by new claims 21-22. The presently claimed invention also includes items uniquely arranged in housings, wherein the items specifically relate to a predetermined stage and each housing includes at least one item from each area of brain development, wherein said areas of brain development include security, touch, eyes, play and sound, as required by the independent claims. Particularly, while the Werzberger product is essentially the creation of a book, the presently claimed invention differs from Werzberger in that the presently claimed invention provides the caregiver with a variety of actual objects, books, toys, household materials, art supplies, etc., called for in the instructions necessary to actually do the activity, all of which are provided in each housing for the adult caregiver. Two pictures of exemplary Boxes and items of the presently claimed invention are attached to this Response for the Examiner's review.

In general, with respect to Brilliant Beginnings, the Brilliant Beginnings document is merely a text format of explaining the importance of the early years (birth to 12 months) and of a variety of suggested activities that can be done at a particular age with young children. The activities listed are not unlike those in many textbooks, pamphlets, and magazines designed for parent or caregiver use. In contrast, the presently claimed invention includes not only actually supplying the caregiver with every single object, book, toy, household item, art supply, etc. called for on a particular activity card in an organized housing system, but the presently claimed invention provides a 5-part system for practicing 5 interrelated aspects of brain development at each and every age and stage of early childhood (birth-5 ½ years). Each housing (12 Boxes in the series) contains instruction for each of these five areas (Security, Touch, Eyes, Play and Sound) and includes everything needed to accomplish the instructions. The Boxes include over 100 actual items (books, puppets, markers, scissors, games, music keyboards, toys, dolls, environmental print objects, letters, picture cards, tapes, CDs, mats, household kitchen items like

spoons, measuring cups, etc.) provided for the caregiver to practice every activity described. This integrated system is a major difference in the intent and use of this new approach.

The Brilliant Beginnings product is one-dimensional indicating the age preferred for doing various activities listed. In contrast, the presently claimed invention is organized in a two-dimensional way in that each primary instructional activity not only indicates the age preferred, but clearly describes which of each of four parts of the brain are being developed by each exercise and why. That is, it is not only organized in a linear way by age, but cuts across that age as well and teaches five different aspects to consider simultaneously to develop the whole brain of the child in this purposeful, systematic way. Additionally, five different aspects of working to integrate several brain areas by specifically prescribed activities in each area also impacts parent attitudes toward developing "the whole child". More specifically, critical to a caregiver's practice of each activity is the understanding of which part of the brain is being stimulated and how the development of that part of the brain is linked to a future school skill. Whereas the Brilliant Beginnings product will state that a particular activity will develop language skills for example, the presently claimed invention gives the practice item needed to do a specific activity (such as working to extend and add vocabulary words), links that activity directly to a specific brain area that is being used (the temporal lobe), and links the development of that brain area to the kinds of skills needed in elementary school that are facilitated by the healthy development of that brain area (concept development for reading comprehension). This critical aspect of linkage to brain development and to future school skills has been shown to make a difference in the degree to which parents actually change their behaviors and begin to DO these activities. Supplying the caregiver with everything needed to DO the activity and to have a chance to immediately practice and implement the activity makes the presently claimed invention patentably distinct.

As such, the presently claimed invention goes way beyond well-known suggested activities by incorporating a housing and detailed activity cards, as required by the independent claims. The Brilliant Beginnings reference does not disclose, teach or suggest activity cards which may include (i) at least one importance of said selected activity to the development of the brain, (ii) at least one importance of said selected activity to brain building of future school

skills, (iii) background information about the type of activity, (iv) directions on how to specifically perform the activity, (v) suggestions about what to say to the child, and (vi) similar activities that can also be accomplished to work on the same skills, as required by new claims 21-22. The Brilliant Beginnings reference also does not disclose, teach or suggest items uniquely arranged in housings, wherein the items specifically relate to a predetermined stage and each housing includes at least one item from each area of brain development, wherein said areas of brain development include security, touch, eyes, play and sound, as required by the amended independent claims.

More specifically, the Examiner asserts that Brilliant Beginnings pages 79-80 disclose a defined age. However, while the present system may include a defined age (ex. *Baby Box 1* 0-6 months or *Baby Box 3* 6-18 months), the "predetermined stage of development" of claim 1 does not necessarily only include the age; rather, the predetermined aspect includes 5 aspects (Security, Touch, Eyes, Play, Sound) that are predetermined and are also then applied at various ages/stages of development. As such, Applicant amends the independent claims to include ". . . . by including items in a housing specifically related to said predetermined stage, such that said housing includes at least one item from each area of brain development, wherein said areas of brain development include security, touch, eyes, play and sound. . . ."

Moreover, with respect to Brilliant Beginnings discussion of engaging a child's attention at pages 84, 88-90, 94-97, 103-108, and 114-118, many activities activate a baby's attention and these activities are not unique to Brilliant Beginnings and Applicant is not attempting to claim these activities by themselves. These kinds of at-home activities listed are not unlike those in many textbooks, pamphlets, and magazines designed for parent or caregiver use. As such, Applicant asserts that the presently claimed invention goes way beyond simply listing activities which activate a baby's attention.

With regard to Brilliant Beginnings page 115 reference to steps of modeling, the *Let's Go Bowling* cite is a verbal description only of modeling. In contrast, as discussed above, the presently claimed invention provides the actual objects needed to accomplish each task listed on the front side of each card, so the modeling is REAL. Modeling in the present invention includes

the parent actually demonstrating the use of the objects/materials provided in the Box. The child is then told to do the same thing that the parent just did.

With regard to Brilliant Beginnings Pages 79-80, 84, 88-90, 94-97, 103-108, 114-118 reference to caregiver directions, the presently claimed invention actually has the caregiver performing each activity. As such, "caregiver directions" not only describe for the caregiver what to do, the instructions also provide the suggested words to say, as a "script", to support caregiver success as they perform each activity.

With regard to Brilliant Beginnings page 84 reference to stimulating vision, the Brilliant Beginnings textbook asks that someone "tape a picture...on the side of baby's crib..." In contrast, the presently claimed invention includes instructions about an infant's preference for faces and provides, for example, a brightly colored "face" rattle, (with mirror on back as well for baby to see his own face) as it instructs the caregiver how to engage the infant to study the rattle face and to practice 'tracking' exercises with the object. On the back of the instruction card, similar to many magazines, periodicals, etc., there is reference to using family photos to engage the infant to look at faces. Again, the presently claimed invention goes way beyond simple well-known methods for engaging an infant to look at faces by providing the complete method in the presently claimed invention.

With regard to Brilliant Beginnings page 84 and 103 reference to promoting attention, facial contact, establishing eye contact, the presently claimed invention instruction includes the actual objects necessary to complete the instructions. Also, the present activity cards used by the caregivers include the critical nature of capturing an infant's attention interwoven throughout not only the infant Boxes, but throughout the series of 12 Boxes as the age of the child increases. Starting in Box 3, the present invention provides a placemat in each Box, that is specifically included for use with many objects/exercise in the Box as an explicit cue for capturing the child's attention. Caregivers are instructed to use the placemat as a signal to the child that they need to pay attention to the 'work' being done at that time and place. This kind of direct instruction as to how and why capturing and maintaining attention is extremely critical and is very different than mentioning in a text format, as in Brilliant Beginnings, that children should be paying attention.

With respect to the Examiner's comments related to claims 8-11 and 13-14, Applicant asserts that the claims are differentiated from the prior art for the same reasons as set forth above. Additionally, for varied voice annotations, the presently claimed invention explicitly links the use of modulated intonations directly to the concept of attention. Additionally, the importance of Play is incorporated into the present invention in that explicit instruction as to why PLAY is critical is part of the activity cards. Significantly, it would be hindsight reasoning to put Brilliant Beginnings activities onto cards and no motivation or teaching exists in Brilliant Beginnings to put the activities onto cards. Moreover, as discussed above, simply putting the text of Brilliant Beginnings onto cards does not create the presently claimed invention. Rather, the presently claimed activity cards are linked to the actual object and the pairing of the instructions with the object is not only 'a difference in degree'; rather, it amounts to 'a difference in kind'.

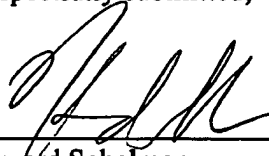
The Examiner next rejects claim 15 under 35 USC 103(a) as being unpatentable over "Brilliant Beginnings Baby Brain Basics Birth to 12 months Parent Kit" in view of Werzberger '298 and further in view of Cohen '658. Applicant respectfully traverses these rejections. Applicant asserts that, because claim 15 depends upon independent claim 1, claim 15 is patentable for the same reasons as set forth above for differentiating independent claim 1 from the prior art. Moreover, while Cohen '658 may generally disclose electronic forms of educational activities, Cohen does not disclose, suggest or teach real interactions and experiences. Particularly, the Cohen disclosure includes a computer enhancement for simulated experiences targeted to a very young child. Cohen consistently discloses the audiovisual simulation of a predetermined visual sequence capable of being activated by a young child. For example, see pg.1 *Brief Summary of the Invention*, paragraph 4. ...."the present invention is a computer toy that simulates a complete activity such as playing a musical instrument, washing dishes, working with a wood shop tool.....and other animated activities, while allowing the child to control the progression of the simulated activity." As another example, see also, Pg. 2 *II. Objects of the Invention*, paragraph 5....an infant or very young child can simulate playing a melody on a musical instrument, helping out around the house,...etc. In contrast, the presently claimed invention includes real interactions and experiences with the actual objects, books, toys, household materials, art supplies, etc., called for in the activity card instructions necessary to actually do the activity, all of which are provided in each housing for the adult caregiver.

Accordingly, Applicant respectfully submits that the pending claims are in condition for allowance. No new matter is added in this Response. Reconsideration of the application is thus requested. Applicant invites the Office to telephone the undersigned if the Examiner has any questions regarding this Response or the present application in general.

Respectfully submitted,

Dated: \_\_\_\_\_

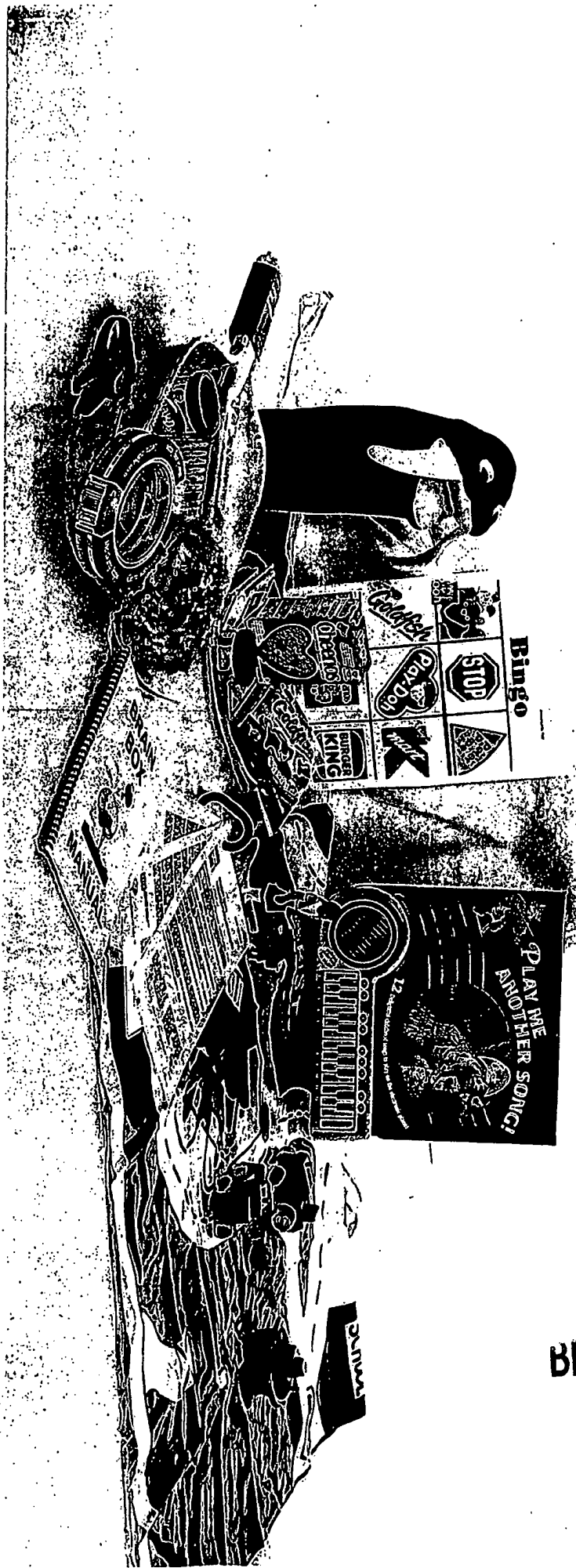
2/19/04



Howard Sobelman  
Reg. No. 39,038

**SNELL & WILMER L.L.P.**  
400 E. Van Buren  
One Arizona Center  
Phoenix, Arizona 85004  
Phone: 602-382-6228  
Fax: 602-382-6070  
Email: [hsobelman@swlaw.com](mailto:hsobelman@swlaw.com)

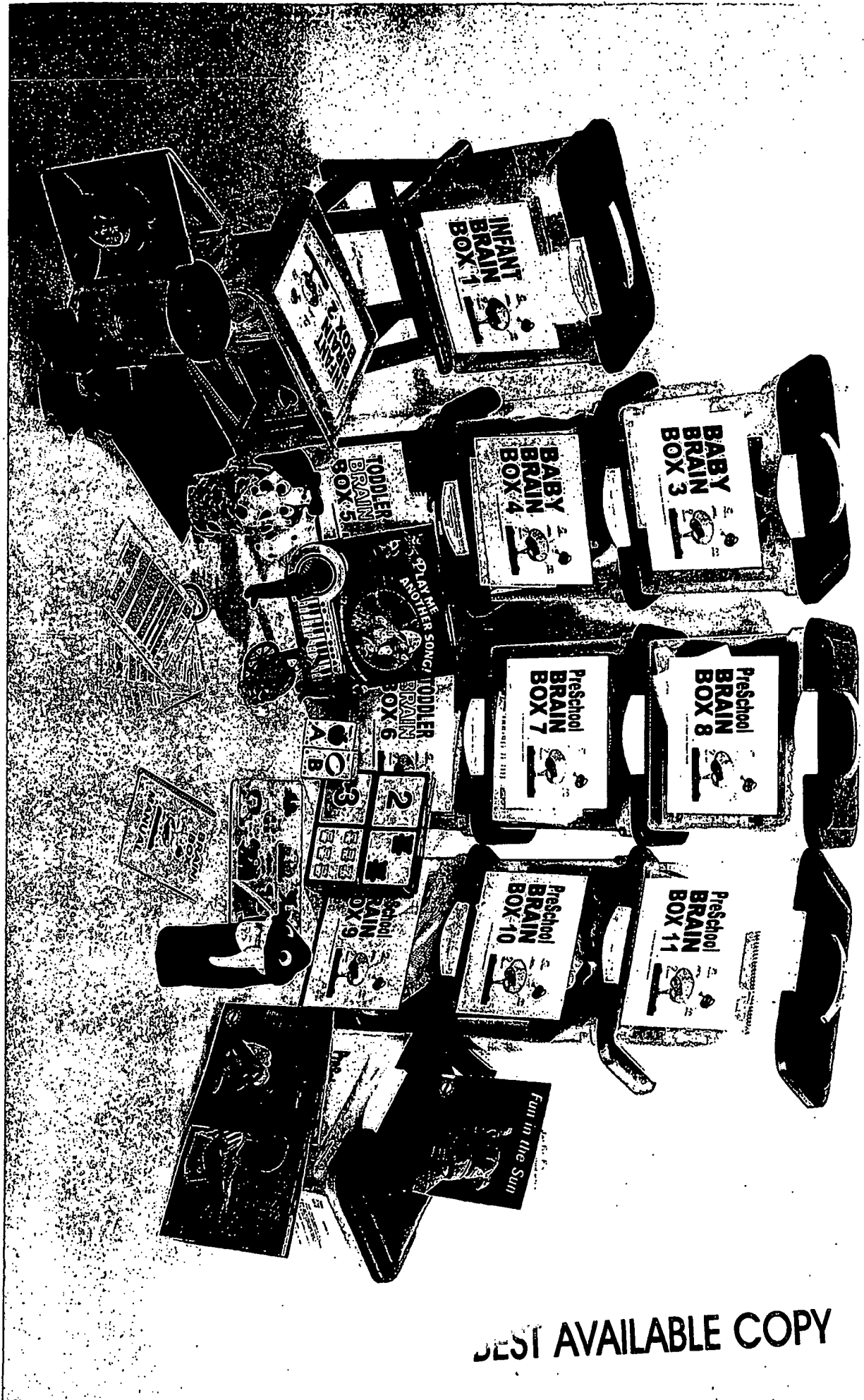




Preschool  
**BRAIN**  
**BOX 9**



**BEST AVAILABLE COPY**



BEST AVAILABLE COPY